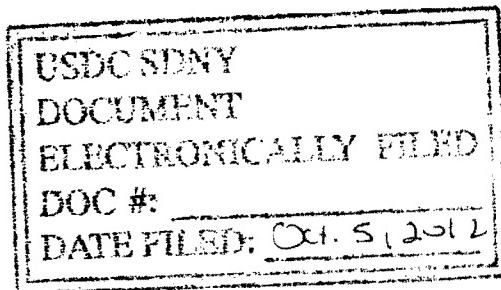


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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

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SWEET PEOPLE APPAREL, INC. d/b/a MISS	Civil Action No. <u>12cv7506 (SAS)</u>
ME	:
Plaintiff,	:
- against -	:
XYZ COMPANY d/b/a MISSME-JEANS.COM,	:
XYZ COMPANY d/b/a	:
MISSMEJEANSOUTLET.COM, XYZ	:
COMPANIES 1-10, and JOHN AND JANE	:
DOES 1-10	:
Defendants.	:
-----	X

EX PARTE TEMPORARY RESTRAINING ORDER, ORDER TO DISABLE CERTAIN WEBSITES, ASSET RESTRAINING ORDER, EXPEDITED DISCOVERY ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

Plaintiff Sweet People Apparel, Inc. d/b/a Miss Me (“Sweet People”), having moved *ex parte* against Defendants XYZ Company d/b/a missme-jeans.com, XYZ Company d/b/a missmejeansoutlet.com, XYZ Companies 1-10, and John and Jane Does 1-10 (collectively “Defendants”) for an *Ex Parte* Temporary Restraining Order, Order to Disable Certain Websites, Asset Restraining Order, Expedited Discovery Order, and Order to Show Cause for Preliminary Injunction (collectively, the “Order to Show Cause”) pursuant to Federal Rule of Civil Procedure

65 and the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, for the reason that Defendants have willfully, deliberately and systematically (i) registered the “www.missme-jeans.com” and “www.missmejeansoutlet.com” (the “Infringing Miss Me Websites”) domain names using Sweet People’s federally registered MISS ME trademark and service mark; and (ii) copied the proprietary content appearing on Sweet People’s authorized “www.missme.com” website, including registered trademarks and service marks appearing on that site, and the Court having reviewed the Complaint, Memorandum of Law in support of the Order to Show Cause, and the supporting Declarations of Lilly Kim and Alan C. Veronick and exhibits submitted herewith, finds that:

1. Sweet People has demonstrated that it is entitled to injunctive relief, by establishing that it is suffering irreparable harm and that it is likely to succeed on the merits of its claims;
2. With respect to likelihood of success on the merits, Sweet People has demonstrated that it is likely to succeed in showing that (i) its Sweet People Marks are valid and protectable and entitled to protection; (ii) Defendants are operating the Infringing Miss Me Websites under various domain names, including, without limitation, “www.missme-jeans.com” and “www.missmejeansoutlet.com”, which contain Sweet People’s registered MISS ME mark (“the Infringing Miss Me Domain Names”), willfully and in bad faith, and in violation of the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(A); and (iii) Defendants are using marks on and in connection with the Infringing Miss Me Websites that are identical to Sweet People’s federally registered MISS ME, M DESIGN and MM COUTURE trademarks and service marks (the “Sweet People Marks”), and have willfully counterfeited, and are continuing to willfully counterfeit these marks, all in violation of 15 U.S.C. § 1114;
3. Unless enjoined, Defendants’ continued use of (i) Sweet People’s registered

MISS ME mark as part of the Infringing Miss Me Domain Names; and (ii) the Sweet People Marks on and in connection with the Infringing Miss Me Websites, will result in immediate and irreparable harm to Sweet People;

4. Defendants have gone to great lengths to conceal themselves and their ill-gotten proceeds from Sweet People's and this Court's detection, including the use of ~~mased~~ and ^k ~~A~~ unidentifiable contact information; c/s

5. If Sweet People were to proceed on notice to Defendants, Defendants would likely destroy, move, hide or otherwise make their assets and records relating to their fraudulent operations under the Infringing Miss Me Domain Names and the Infringing Miss Me Websites inaccessible to the Court, thereby frustrating the ultimate relief Sweet People seeks in this action;

6. Sweet People's harm from the denial of the requested *ex parte* Order would significantly outweigh any harm to Defendants' legitimate interests from granting such an Order;

7. Entry of an order other than the requested Order to Show Cause would not adequately achieve the purposes of the Lanham Act, including the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(A), to preserve Sweet People's equitable remedies, including, *inter alia*: the disabling of the Infringing Miss Me Websites; the right to take discovery relating to the Infringing Miss Me Domain Names and Defendants' operations thereunder; and preservation of Sweet People's right to an equitable accounting of Defendants' ill-gotten gains.

THEREFORE, IT IS HEREBY ORDERED that Defendants show cause, on or before the ✓ 9th day of October 2012 at 1 p.m. or as soon thereafter as counsel can be heard, in Courtroom 15C in the United States District Court for the Southern District of New York, why an order pursuant to Federal Rule of Civil Procedure 65 and Section 34 of the Lanham Act should not be entered granting Sweet People a Preliminary Injunction as follows:

- (a) Enjoining and restraining Defendants, their officers, agents, servants and employees, and any persons in active concert or participation with them, including but not limited to Internet service providers (“ISPs”), domain name registrars (*e.g.*, eNom, Inc.), registrant service providers (*e.g.*, Namecheap, Inc. d/b/a Namecheap.com) and web hosting service providers, from:
- (i) using the Sweet People Marks, or any reproduction, counterfeit, copy or colorable imitation of the Sweet People Marks, in connection with the purported provision of online retail services; and
 - (ii) using the Sweet People Marks, or any reproductions, counterfeit, copy or colorable imitation of the Sweet People Marks, in connection with the purported distribution, advertising, promotion, marketing, offer for sale and/or sale of products that are not authorized by Sweet People; and
 - (iii) utilizing the Infringing Miss Me Domain Names and registering any additional domain names that use, or incorporate in any way, any of the Sweet People Marks or any other trademarks or service marks owned by Sweet People; and
 - (iv) creating, owning, designing, operating and/or hosting the Infringing Miss Me Websites, or any other websites that use the Sweet People Marks or any other trademarks or service marks owned by Sweet People; and
 - (v) using the Sweet People Marks, or any reproductions, counterfeit, copy or colorable imitation of the Sweet People Marks, in connection with the collection of personal identifying information and the processing of any payments.

- (b) Restricting the transfer of Defendants' assets pursuant to the provisions of this Order to Show Cause hereinafter set forth.
- (c) Ordering any domain name registries providing online services to Defendants, including but not limited to eNom, Inc. and/or Namecheap, Inc. d/b/a Namecheap.com, to deactivate and/or disable the Infringing Miss Me Domain Names, through a registry hold or otherwise, and make them non-transferable, and to preserve all records pertaining to the Infringing Miss Me Domain Names and the Infringing Miss Me Websites, including information concerning the registration of the Infringing Miss Me Domain Names, until a further order from this Court issues.

IT APPEARING to the Court that Defendants have willfully, deliberately and systematically (i) registered and used Sweet People's federally registered MISS ME trademark and service mark in the Infringing Miss Me Websites; and (ii) copied the proprietary content appearing on Sweet People's authorized www.missme.com website, including the Sweet People Marks; and will continue to carry out such acts unless restrained by order of the Court, it is hereby:

ORDERED, that pending the hearing on Sweet People's application for a Preliminary Injunction, Defendants, including their agents, servants, employees, confederates and any persons acting in concert or participation with them or third parties providing services used in connection with Defendants' operations including, without limitation, ISPs, registrars, web hosting service providers, registrant service providers, or online third-party selling platforms, having knowledge of this Order to Show Cause by service, actual notice or otherwise, be, and are, hereby temporarily restrained from

- (a) Committing any of the acts set forth in subparagraphs (a)(i)-(iv) herein above; and

(b) Removing, destroying or otherwise disposing of any computer files, electronic files, business records, or documents relating to Defendants' Infringing Miss Me Websites, Defendants' Infringing Miss Me Domain Names, or Defendants' assets; and it is further

ORDERED, that Sweet People may take immediate discovery by providing actual notice, pursuant to subpoena or otherwise, of this Order to Show Cause to any of the following: (1) Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them; (2) any third party service providers, including without limitation, ISPs, back-end service providers, web designers, sponsored search engine or ad-word providers, shippers, domain name registrars (*e.g.*, eNom, Inc.), domain name registries, web hosting service providers, registrant service providers (*e.g.*, Namecheap, Inc. d/b/a Namecheap.com) or any third-party who has provided online services for Defendants, including online third-party selling platforms; and (3) any banks, savings and loan associations, payment processors or other financial institutions, including without limitation, any merchant account providers, payment providers (*e.g.*, Western Union), third party processors, and/or credit card associations (*e.g.*, MasterCard and VISA), which receive payments or hold assets on Defendants' behalf; and it is further

ORDERED, that any third party providing services in connection with the Infringing Miss Me Websites or the Infringing Miss Me Domain Names, including without limitation, ISPs, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers, third party processors and other payment processing services, shippers, domain name registrars (*e.g.*, eNom, Inc.), domain name registries, web hosting service providers, registrant service providers (*e.g.*, Namecheap, Inc. d/b/a Namecheap.com) or any third-party who has provided online services for Defendants, including

online third-party selling platforms, shall within five (5) days after receipt of such notice, provide copies of all documents and records in such person or entity's possession or control relating to:

- (a) The identities and addresses of Defendants, their agents, servants, employees, confederates, and any persons acting in concert or participation with them and the locations and identities of Defendants' operations, including without limitation, identifying information associated with the Infringing Miss Me Websites, the Infringing Miss Me Domain Names and financial accounts;
- (b) The Infringing Miss Me Websites, including but not limited to copies of the Infringing Miss Me Websites themselves and all related electronic documents;
- (c) The Infringing Miss Me Domain Names and any other domain names registered by Defendants; and
- (d) Any financial accounts owned or controlled by Defendants, including their agents, servants, employees, confederates, ~~attorneys~~, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including without limitation, and other merchant account providers, payment providers, third party processors (e.g., Western Union), credit card associations (e.g., MasterCard and VISA); and it is further

ORDERED, that the Temporary Restraining Order shall remain in effect until the date for hearing on the Order to Show Cause set forth above, or such further dates as set by the Court, unless Defendants stipulate, or have not objected to the Preliminary Injunction; and it is further

{ ORDERED, that Sweet People shall post a corporate surety bond in the amount of ten thousand dollars (\$10,000.00) as security, determined adequate for the payment of such damages

as any person may be entitled to recover as a result of a wrongful restraint hereunder; and it is further

ORDERED, that sufficient cause having been shown, service on Defendants of this Order to Show Cause together with the Summons and Complaint shall be made on or before October 19, 2012 at 5 p.m.; and it is further

ORDERED, that Sweet People may complete service of process on Defendants by serving by email, the registrar of the Infringing Miss Me Domain Names, namely eNom, Inc. (at legal@enom.com and copyright@enom.com) and the registration service provider of the Infringing Miss Me Domain Names, namely Namecheap, Inc. d/b/a Namecheap.com (at abuse@namecheap.com and support@namecheap.com); which will provide adequate notice to Defendants pursuant to Fed. R. Civ. P. 4; and it is further

ORDERED, that Sweet People's counsel file with the Court within ten (10) days after this Order to Show Cause is executed, an affidavit or declaration setting forth: (a) the date on which the Order was executed, (b) the date and means with which the Defendants were served with a copy of this Order to Show Cause, and (c) a description of the domain names, websites and other assets that were disabled and/or restrained; and it is further

ORDERED, that in accordance with 15 U.S.C. § 1116(a) and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, Defendants and their officers, servants, employees and agents and any persons in active concert or participation with them, and any banks, savings and loan associations, payment processors or other financial institutions, or other merchant account providers, payment providers, or third party processors for any Defendant, any of Defendants' operations, Defendants' Infringing Miss Me Websites and Infringing Miss Me Domain Names or for any other websites or domain names owned or controlled by Defendants, who receive actual notice

of this Order to Show Cause, including without limitation MasterCard, Visa and Western Union, shall immediately locate all accounts connected to Defendants or the Infringing Miss Me Websites and Infringing Miss Me Domain Names and that such accounts be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets, not allowing such funds to be transferred or withdrawn, and not allowing any refunds, charge-backs, or other diminutions to be made from such accounts pending further order from this Court; and it is further

ORDERED, that upon two (2) business day's written notice to the Court and Sweet People's counsel, any Defendant may, upon proper showing, appear and move for the dissolution or modification of the provisions of this Order to Show Cause concerning the restriction upon transfer of Defendants' assets; and it is further

ORDERED that, in accordance with 15 U.S.C. § 1116(a) and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, the appropriate domain name registries or registrars, including but not limited to eNom, Inc. and Namecheap, Inc. d/b/a Namecheap.com, shall upon receipt of this Order to Show Cause, temporarily disable the Infringing Miss Me Domain Names, through a registry hold or otherwise, and make them inactive and non-transferable pending further order from this Court; and it is further

ORDERED that, in accordance with 15 U.S.C. § 1116(a) and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, any third party providing services in connection with Infringing Miss Me Websites, including without limitation ISPs, back-end service providers, affiliate program providers, web designers, domain name registrars (*e.g.*, eNom, Inc.), domain name registries, web hosting service providers, registrant service providers (*e.g.*, Namecheap, Inc. d/b/a Namecheap.com),

sponsored search engine or ad-word providers, and any third-party who has provided online services for Defendants, shall immediately temporarily disable service to the Infringing Miss Me Websites; and it is further

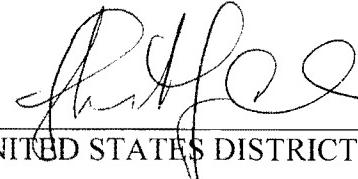
ORDERED, that Defendants' answering papers, if any, shall be filed with the Clerk of this Court and served upon the attorneys for Sweet People by delivering copies thereof to the offices of Arnold & Porter LLP, 399 Park Avenue, New York, New York 10022 Attention:

Louis S. Ederer, before 5 p.m. on Oct 16, 2012. Any reply shall be filed and served by Sweet People by 5 p.m. on Oct 18 2012; and it is finally

ORDERED, that this action shall remain sealed by the Court until the date for hearing on the Order to Show Cause set forth above, at which time the Clerk shall remove the seal.

Defendants are hereby given notice that failure to attend the hearing scheduled herein may result in confirmation of the seizure authorized herein, destruction or other disposition of the goods seized, if any, immediate issuance of the prayed-for Preliminary Injunction to take effect immediately upon expiration or dissolution of the Temporary Restraining Order, and shall otherwise extend for the pendency of this litigation relief upon the same terms and conditions as comprise this Temporary Restraining Order. Defendants are hereby given further notice they shall be deemed to have actual notice of the issuance and terms of such Preliminary Injunction and any act by them or any one of them in violation of any of the terms thereof may be considered and prosecuted as contempt of this Court.

SIGNED this 5 day of October 2012.


UNITED STATES DISTRICT COURT JUDGE